

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Goal Physical Therapy P.C  
(Applicant)

- and -

Palisades Insurance Company  
(Respondent)

AAA Case No.	17-23-1302-4271
Applicant's File No.	133743
Insurer's Claim File No.	817902199579-003
NAIC No.	36587

**ARBITRATION AWARD**

I, Lester Hill, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: EIP

1. Hearing(s) held on 12/29/2023  
Declared closed by the arbitrator on 12/29/2023

Andy Jean-Pierre from Law Offices of Eitan Dagan (Woodhaven) participated virtually for the Applicant

Mariska Lalbeharry from Law Office of Joseph C. Sette & Associates participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$475.00**, was NOT AMENDED at the oral hearing.  
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

Was the activities limitation measurement testing conducted on March 7, 2023 medically unnecessary based upon the peer report by Dr. Richard Coven dated April 25, 2023? The 20-year-old male EIP was involved in a motor vehicle accident on November 10, 2022 and received treatment for injuries to the neck, low back, and left knee.

4. Findings, Conclusions, and Basis Therefor

At issue is whether the activities limitation measurement testing conducted on March 7, 2023 was medically unnecessary.

The basis of the respondent's timely denial is the peer report by Dr. Richard Coven dated April 25, 2023.

I have reviewed the documents contained in the electronic case folder as of December 29, 2023. This decision is rendered based upon those documents and the parties arguments at the hearing conducted on December 29, 2023.

New York's Comprehensive Motor Vehicle Insurance Reparation Act requires an insurance carrier to reimburse an injured party (or his or her assignee) for all "reasonable and necessary expenses" and "medical expenses" arising from the use and operation of the insured vehicle.

Lack of medical necessity is a valid defense to an action to recover No-Fault benefits. *Countrywide Ins. Co v. 563 Grand Med.*, P.C. 50 A.D. 3d 313 (1st Dept. 2008); *A.B. Med. Servs., PLLC v. Liberty Mut. Ins Co.*, 39 A.D. 3d 779 (2d Dept. 2007).

An insurance carrier must establish a detailed factual basis and a sufficient medical rationale for its position that the medical service was not medically necessary. *Vladimir Zlatnick, M.D. P.C. v. Travelers Indem. Co.*, 2006 NY Slip Op 50963(U) (App Term 1st Dept. 2006).

The EIP was involved in a motor vehicle accident on November 10, 2022. The EIP was treated at the emergency room of Elmhurst Hospital on the day of the accident. The EIP presented to Avenue Medical Care on November 21, 2022 with complaints of pain in the neck, low back, and left knee. The examination reported reduced range of motion with tenderness and spasms in the cervical and lumbar musculature and full range of motion of the left knee. The EIP was placed on a course of conservative treatment. The EIP underwent trigger point injections (unknown location of the spine) on December 27, 2022. The EIP underwent MRIs of the cervical and lumbar spine December 29, 2022 which reported disc herniations at C7-T1 and L5-S1 and disc bulge at L4-L5. The EIP underwent activities limitation testing on January 11, 2023. The EIP underwent extracorporeal shockwave therapy to the cervical spine on January 12, 2023. The EIP presented to Dr. Hall on January 12, 2023 with complaints of pain in the neck and low back. The examination reported reduced range of motion of the cervical and lumbar spine and positive orthopedic testing for the cervical and lumbar spine. The EIP underwent activities limitation testing on March 7, 2023. The applicant billed for this service under CPT code 97039 (unlisted modality), a "by report code" without fixed relative value units in the amount of \$475.00.

Dr. Coven states that the activities limitation testing was medically unnecessary. He states that this type of testing may be reasonable for patients with neurological or musculoskeletal conditions when there is a need to evaluate their ability at a specific task. He states this type of testing should not be used in lieu of a reevaluation. He states

that the testing administered to the EIP was not provided to increase the EIP's functional goals or help alter the treatment program and was therefore medically unnecessary. He states the standard of care does not involve activity limitation measurement of soft tissue and musculoskeletal injuries as a comprehensive history and examination is appropriate.

Dr. Frank Segreto submitted a rebuttal asserting that the activities limitation measurement testing was medically necessary. He states that the testing, by measuring the abilities before and after a rehabilitation program has been commenced, provides the evidence to modify the program if necessary.

Significantly, the respondent submitted the affidavit of Carolyn Mallory, a certified bill coder. She states that the testing was the NIOSH computerized muscle testing and that the appropriate code for this type of testing is CPT code 97750 (physical performance testing). She states this is based upon CPT Assistant, February, 2007 and August, 2013. She states that CPT code 97750 has zero relative value units and therefore there is no reimbursement for this type of testing.

The fee schedule in the Physical Medicine section notes several CPT codes with zero relative value units including 97750, 95831 (muscle testing), 95851 (range of motion). Clearly, it was the intention of the drafters of the Fee Schedule that reimbursement for these tests was effectively eliminated.

I agree with the respondent's fee coder that this claim is based upon NIOSH computerized muscle testing and following the CPT Assistant sections cited above the appropriate billing for this type of testing is CPT code 97750, for which there is no reimbursement.

Additionally, the applicant billed under CPT code 97039 (unlisted modality), presumably done so to avoid the perceived harshness of the CPT Assistant decisions cited above. The service provided by the applicant was not administering a modality, which is a type of treatment. The applicant was conducting testing and billing a claim for treatment is improper. For that reason alone, the claim should be denied.

As I find there is no reimbursement for the service provided by the applicant, the issue of whether the service was medically unnecessary is moot.

Accordingly, applicant's claim is denied in its entirety.

5. Optional imposition of administrative costs on Applicant.  
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions
- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of NY  
SS :  
County of Nassau

I, Lester Hill, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

01/01/2024  
(Dated)

Lester Hill

**IMPORTANT NOTICE**

*This award is payable within 30 calendar days of the date of transmittal of award to parties.*

*This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.*

## **ELECTRONIC SIGNATURE**

**Document Name:** Final Award Form  
**Unique Modria Document ID:**  
c099a84b8cd401f6f722d5d824a74108

### **Electronically Signed**

Your name: Lester Hill  
Signed on: 01/01/2024